

Appl. S.N. 10/822,233  
Amdt. Dated Jan. 5, 2006  
Reply to Office Action of Oct. 5, 2005

145885-1

### REMARKS/ARGUMENTS

This amendment is responsive to the Office Action mailed 10/05/2005 wherein claims 1-6, 9-12 and 15-20 were rejected under 35 USC §103 (a) as being unpatentable over Ellis et al. (US 5,045,839); and claims 7-8, 13-14 and 21 were rejected under USC §103 (a) as being upatentable over Ellis et al. (US 5,045,839) in view of Kutzik et al. (US 6,108,685). In the Office Action, the drawings were objected to. In this amendment, claims claim 8 was amended. No new matter has been added.

Claims 1-21 remain pending in this application. Reconsideration in light of the above amendments and the following remarks is respectfully requested.

Claim 8 has been amended to more clearly recite the invention and to overcome the drawing objection noted by the Examiner. Claim 8, as amended, now recites the sensor comprises a pad for detecting activity. There are no claimed features not contained within the drawings. Thus, withdrawal of the objection is respectfully requested.

Applicants respectfully traverse the rejection of claims 1-6, 9-12 and 15-20 under 35 USC 103(a) over Ellis et al. Independent claims 1, 9 and 15 each recite a first signal indicative of activity (1 and 9) or motion (15). As stated in the Office Action, Ellis et al. does not specifically disclose a first signal indicative of activity but the Examiner asserts that it would be obvious that lack of transmission of an activity signal is indicative of activity. The Examiner does not provide support for this assertion. Applicants submit that the Examiner has not met his/her burden of establishing a prima facie case of obviousness with respect to claims 1-6, 9-12 and 15-20. Applicants note that the burden of establishing a prima facie case of obviousness is on the Examiner (MPEP 2142 – "The Examiner bears the initial burden of factually supporting any prima facie case of obviousness. If the Examiner does not produce a prima facie case of obviousness, the applicant is under no obligation to submit evidence of nonobviousness."). In the present case, the Examiner provides no motivation to modify the Ellis system so as to generate a first signal indicative of activity, and thus has failed to establish a prima facie case of obviousness and improperly attempts to shift the burden of establishing non-obviousness on the Applicant.

For at least the above reasons, Applicants respectfully submit that independent claims 1, 9 and 15, and claims depending thereon, are patentable over the Ellis reference.

Applicants respectfully traverse the rejection of claims 7-8, 13-14 and 21 under 35 USC 103(a) over Ellis et al. in view of Kutzik et al. Claims 7-8, 13-14 and 21 depend from claims 1, 9 and 15 respectively and for reasons stated above, Applicants respectfully submit that the

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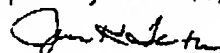
independent claims are patentable over the Ellis reference. The Kutzik reference does not overcome the deficiencies of the Ellis reference. Applicants interpret the Office Action as stating the proposed combination would be the motion detection system of Ellis with the motion sensor of Kutzik. Neither reference teaches the claimed elements of the independent claims and the dependent claims recite further inventive features. Therefore, claims 7-8, 13-14 and 21 are patentable over the Ellis and Kutzik references.

Therefore, Applicants' respectfully submit that claims 1-21 are allowable and requests that the rejections under 35 USC §103 (a) be withdrawn.

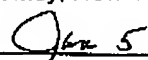
In view of the foregoing amendment and for the reasons set out above, Applicants respectfully submit that the application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are respectfully requested.

Should the Examiner believe that anything further is needed to place the application in condition for allowance, the Examiner is requested to contact Applicants' undersigned representative at the telephone number below.

Respectfully submitted,

  
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